

★ MAR 07 2011 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MIKHAIL YAGUDAYEV,

Plaintiff,


– against –

UNITED STATES POSTAL SERVICE,

Defendant.

**MEMORANDUM &  
JUDGMENT**

10-CV-3698



**JACK B. WEINSTEIN, Senior United States District Judge:**

*Pro se* plaintiff sued for \$69 under the Federal Tort Claims Act (“FTCA”) against United States Postal Service alleging that defendant failed to deliver a package to plaintiff’s home address.

Defendant moved to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) alleging that plaintiff’s claim for lost and/or negligently handled mail is barred under FTCA and that the Court lacks subject matter jurisdiction to adjudicate plaintiff’s claim since he failed to exhaust administrative remedies.

At a hearing in March 3, 2011 plaintiff conceded that he had not exhausted administrative remedies. He had failed to file a claim.

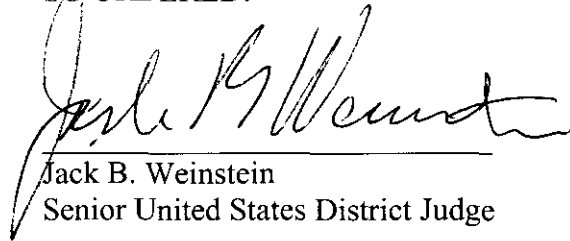
Under 28 U.S.C. § 2680(b) the United States does not waive its sovereign immunity with regard to “[a]ny claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.” *See Dolan v. United States Postal Serv.*, 546 U.S. 481, 485 (2006); *Anderson v. United States Postal Service*, 761 F.2d 527 (9th Cir. 1985). The Court lacks subject matter jurisdiction.



Even if plaintiff's claim was actionable under the FTCA, it is dismissed for failure to exhaust administrative remedies. *See* 28 U.S.C. § 2675(a).

Defendant's motion to dismiss is granted, without costs or disbursements. The case is dismissed.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Jack B. Weinstein", is written over a horizontal line. The signature is fluid and cursive, with a large initial "J" and "W".

Jack B. Weinstein  
Senior United States District Judge

Date: March 3, 2011  
Brooklyn, New York